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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,236	09/17/2003	Sandra M. Maclean	11842/US/2	5239

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S. Wade Johnson
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EXAMINER

HILL, LAURA C

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/664,236

Applicant(s)

MACLEAN ET AL.

Examiner

Laura C. Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 10-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 25-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6 November 2006 has been entered.

Response to Arguments

Applicant's arguments filed 6 November 2006 have been fully considered but they are not entirely persuasive.

2. In response to Applicant's arguments that 'Schumacher does not disclose, teach, or suggest a miscarriage kit comprising at least one under pad/bed liner' with regard to claim 1 (see Remarks pages 7-8), since the underpad/bed-liner 14 is described in structure by Applicant only as having an absorbent component and capability (see instant specification page 9, lines 6-15), the absorbent containing pouch 60 or Schumacher is equivalent to the under pad/bed liner. Furthermore, the granular absorbent material 62 of Schumacher is contained a package 59 for improved cleanup (column 2, lines 54-63).

3. In response to applicant's argument that the bedliners are useful where a woman chooses to miscarry in a bed, chair, sofa, or other physical surroundings (see Remarks page 8), a recitation of the intended use of the claimed invention must result in a

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structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

4. Applicant's arguments with regards to claim 2 (see Remarks pages 8-10) have been considered and found persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Gordon (US 6,434,762) as discussed below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 and 25-30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Schumacher (US 4,917,238).

Assuming the limitation "miscarriage" is given little patentable weight, Schumacher

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discloses a kit 10 for cleaning up body waste such as vomit, blood, feces and the like (column 1, lines 9-12, column 2, lines 6-7, figure 1) comprising an absorbent pouch/underpad-bed liner 60 (column 4, lines 19-20); at least one disposable absorbent towels 50 and sanitary napkins 51, 52 (column 2, lines 45-47); disposable plastic gloves 57,58 (column 2, lines 52-53); scoop/specimen pan 80; and container 64 capable of holding body waste, pregnancy remains, or any other substance (column 3, lines 1-3 and line 33).

Alternatively, assuming the limitation "miscarriage kit" is given patentable weight and is consistent with its plain ordinary meaning of expulsion of a fetus from the womb before it is able to survive independently (see Oxford online dictionary), regarding claim 1 Schumacher discloses a waste cleanup kit 10 for cleaning up body waste such as vomit, blood, feces and the like (column 1, lines 9-12, column 2, lines 6-7, figure 1) that is thus capable of being used as a miscarriage kit since a fetus can be thrown away like other types of bodily waste. Schumacher further discloses the limitations discussed above.

Regarding claim 25 Schumacher discloses container 64 is spill-proof and sanitary since it has cap 68 that confines the liquids (column 3, line 20).

Regarding claims 26-30 Schumacher discloses label/list 63 (col. 2, ll. 64-68); two plastic bags 53,54 (column 4, lines 47-48); germicidal hand wipe 7 and scraper 90 (col. 3, lines 25 and 33-34).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 2-9 are rejected under 35 U.S.C. 103(a) as being obvious over Schumacher (US 4,917,238) in view of Gordon (US 6,434,762).

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the

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application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2).

Regarding claim 2 Schumacher discloses the kit with specimen pan 80 as discussed above with respect to claim 1. Schumacher *does not expressly disclose* the pan is configured to fit inside the rim of a toilet. **Gordon** discloses a stool/waste collecting apparatus 10 secured to a toilet seat TS (column 2, lines 28-31) and having a receptacle/specimen pan 14 which fits inside the rim of a toilet (column 2, lines 46-55, figures 1-3) for depositing bodily waste without fear of touching the sample (column 3, lines 31-41). One would be motivated to modify the kit of Schumacher with the specimen pan of Gordon to improve anti-contamination of the system since the references disclose apparatus to dispose bodily waste. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the kit, thus providing a specimen pan to fit inside a toilet rim.

Regarding claims 3-9 see the discussion above with respect to claims 1-2 and 25-30.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (hours vary).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C. Hill
Examiner
Art Unit 3761

LCH

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TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

Tatyana